MICHAEL S. SPEARMAN
JUDGE OF THE SUPERIOR COURT
401 FOURTH AVENUE NORTH
KENT, WASHINGTON 98032
(206) 296-9211

October 3, 2005

Roger Davidheiser
King County Prosecutor's Office
516 3rd Ave. #W554
Seattle, WA. 98104

James Konat
King County Prosecutor's Office
516 3rd Ave. #W554
Seattle, WA. 98104

Louis Frantz
110 Prefontaine PL S. #200
Seattle, WA. 98104

Carl Luer
110 Prefontaine PL S #200
Seattle, WA. 98104

Re: State v. Leemah Carneh, No. 01-1-02482-1 KNT

Counsel:

Please find as set forth below the court's findings and conclusions regarding the competency hearing held in the above matter on September 13, 14 and 19, 2005.

In March of 2001 the defendant, Leemah Carneh, was charged with four counts of Aggravated Murder in the First Degree. The matter is now before this court on the state's motion for an order finding that the defendant is competent to go forward to a trial on these charges. The court heard testimony from four expert witnesses. Drs. Steven Marquez and Brian Waiblinger testified on behalf of the state and Drs. George Woods

and Dale Watson testified on behalf of the defendant. All four experts agreed that Mr. Carneh is a paranoid schizophrenic and that he suffers from delusions. They all concurred that the test for competency in Washington consists of two prongs, i.e. whether the defendant has the capacity to understand the nature of the proceedings against him and whether he is capable of rationally assisting his attorneys in the defense of his cause. Further, all four experts agreed that as to the first prong the defendant met the standard of competency. (Indeed, at no time in the history of this case has it has been contended that the defendant lacked the capacity to understand the nature of the proceedings against him.) They disagreed however, on the second prong. Drs. Marquez and Waiblinger opined that the defendant was capable of rationally assisting his attorneys in the preparation of his defense, while Drs. Woods and Watson opined that he was not.

In weighing the testimony of these experts, the court notes exceptional degree of concurrence among them, not only in the instant proceeding but throughout the history of this case. In September 2001 the court entered an order finding the defendant to be incompetent. The court's order was based, in part, on the concurring opinions of defendant's expert, Dr. Watson and state's expert, Dr. Janet Shaeffer of Western State Hospital. Both doctors concluded that although the defendant was capable of understanding the proceedings against him, he was not able to rationally assist in the preparation of his defense.

In February 2002, the court found that the defendant was competent. Although the evidence in this proceeding was disputed it is significant to note that Dr. Woods concurred with Dr. Schaeffer's opinion that the defendant was competent. And while Dr. Watson concluded that the defendant had not regained competency, he acknowledged

that the issue of the defendant's ability to assist in his defense was a close call and that the defendant showed improvement and had some degree of increased ability in this area.

By May 2002 experts for both sides again agreed that the defendant was incapable of assisting counsel in preparation of his defense and an agreed order finding the defendant incompetent was entered. After a 90 day commitment at WSH, however, it was undisputed that the defendant's competency had been restored and an agreed order so finding was entered. Similarly, in June, September and December of 2004 the court entered agreed orders finding the defendant incompetent.

This history of agreement between the opposing experts and the parties on the issue of the defendant's competency is significant. It suggests that partisanship has taken a back seat to the expert's efforts to accurately assess the defendant's abilities. It also removes as an issue whether the defendant is malingering or manufacturing the symptoms of a mental illness in order to manipulate the outcome of these proceedings. All experts and parties agree that the defendant suffers from paranoid schizophrenia and that the symptoms he exhibits are consistent with that diagnosis. Finally, because the fact of the defendant's mental illness and its associated symptoms and behaviors are not in dispute, the court is at liberty to focus its attention on the legal questions presented.

The defendant argues that based upon the most recent order finding him to be incompetent, that he is, in the context of this proceeding, presumed to be incompetent. *State v. Blakely*, 111 Wn.App. 851, 861-62 (2002). He further argues that the state bears the burden of rebutting this presumption and establishing by a preponderance of the evidence that he is now competent to stand trial. *Born v. Thompson*, 117 Wn.App. 57 (2003) *reversed on other grounds*, *Born v. Thompson*, ____ Wn.2d _____, 117 P.3d

1098 (2005). The state urges on the other hand, that the public policy of holding individuals accountable for their conduct creates a strong presumption of mental capacity and that the burden of proof lies with the party asserting the existence of mental incapacity. *State v. McDonald*, 89 Wn.2d 256, 271 (1977).

The state's reliance on *McDonald* is misplaced since the discussion therein revolved around the proper jury instructions to be given when the defendant asserted an insanity defense. In that case the defendant argued that the presumption of sanity and the requirement that he prove insanity by a preponderance without the requiring the state to prove sanity beyond a reasonable doubt placed an unconstitutional burden on him. The court rejected the defendant's claim relying, in part, on "our society's most basic traditions of free will and personal responsibility." *Id*. The court's holding did not address the issue of a presumption in a competency proceeding where there has been a previous finding of incompetency.

However, the defendant's reliance on *Born* is also in error. *Born*, insofar as it is relevant here, simply stands for the proposition that the state bears the burden of proof where it seeks to confine a defendant for purposes of restoring competency pursuant to RCW 10.77.090. In the instant matter the state seeks to establish that the defendant is competent, it does not seek to confine him to restore his competency. Accordingly, *Born* is of little help in this case.

In *Blakely*, the court held that proof of an adjudication of mental illness, raises a rebuttable presumption of mental incompetency. *State v. Blakely*, 111 Wn.App. 851, 861. While the *Blakely* court did not define the term "mental illness adjudication", it seems reasonable that an order finding a defendant incompetent would fall within the

meaning of this phrase. Since in this case the defendant was found to be incompetent on December 2, 2004, the court is satisfied that in this proceeding, there is a presumption that the defendant remains incompetent. Further, it follows that the burden of proof should lie with the party seeking to rebut the presumption, which in this matter is the state. The court is mindful, however, that regardless of the posture of this case "[i]t is the fact of mental incompetency, not the adjudication of mental illness, that determines one's inability to … aid in his own defense." *Blakely, supra* at 861-62, quoting *State v. Bonner*, 53 Wn.2d 575, 587-88 (1959).

It is undisputed that as a result of his mental illness the defendant has created an elaborate delusional system. The defendant believes that the charges against him are the result of a conspiracy involving law enforcement, the prosecutor, the media, and the judge assigned to this case. The defendant has posited a number of reasons for the conspiracy. He has said that it is because his name has the word "car" in it and people are jealous of cars. He has also claimed it is because his name is French. At times, he also believes his attorneys are part of this conspiracy. He has claimed, for example, that they are in league with the prosecutors, that they have recorded their meetings with him and they have attended hearings without him. The defendant has said that he cannot get a fair trial. He believes this is because of the conspiracy but also because of the media's biased publicity about the case and because of racial discrimination.

The defendant is aware of the evidence against him that the state intends to present at trial. During a period of time in 2002 when the defendant was determined to be competent he was able to discuss the evidence with his attorneys and his experts. It was during this period that the defendant entered his plea of not guilty by reason of

insanity. Currently, the defendant is still able to acknowledge the state's evidence but claims that it is false (or, in his words, "framery") and that it was created as part of the conspiracy against him. For example, he contends that evidence said to have been found in his home and among his possessions was planted by a dishonest police officer. He has stated that he believes the evidence will result in his conviction unless Anglica Biblica intervenes on his behalf.

Anglica Biblica is a religious organization to which the defendant claims he belongs. He claims that as a result of that association he has a number of powers and characteristics. For example, he believes that he was created, not born. He believes that he has no natural parents and that the parents who raised him actually adopted him from a church in London. He believes that he can turn himself into seven identical persons, that he has the power to change form and the ability to see the words that people speak. Although the defendant is clearly of African descent, he believes that he is in fact Caucasian.

The defendant believes that because of some misconduct on his part, he has lost these powers and his original skin color. He views his trial on the instant charges as some sort of ordeal to atone for his mistake. He believes that Anglica Biblica has intervened or will intervene in these proceedings by telling a judicial body (the "Supreme Judges" or "the district court") that he is to be acquitted and released. That body has, in turn, instructed or will instruct the trial judge to release him. According to the defendant, if the judge fails to abide by this instruction, the judge will be punished with incarceration for up to life in prison. Upon the defendant's release from confinement, he believes that his powers and his white skin will be returned to him.

The defendant's appears to genuinely believe that Anglica Biblica will intervene in these proceedings. However, when prompted, he will acknowledge the possibility that it may not occur. If it fails to occur, the defendant has stated that he will feel "ripped off." Even though the defendant believes that the trial judge is part of the conspiracy against him, he believes he should waive his right to a jury trial because a jury would interfere with Anglica Biblica's intervention. He also stated that a jury would not be fair to him. His reasons for this concern are because of biased pretrial publicity, racial prejudice and prejudice because his name is French. In addition, it appears that the defendant believes the role of his attorneys in the trial is to lay the ground work for Anglica Biblica's intervention by waiving jury and declaring his innocence to the court. Thereupon, he will be released.

The defendant believes that there are two types of not guilty by reason of insanity pleas, insanity 1 and insanity 2. According to the defendant, by pleading insanity 1, a defendant asserts that he did not commit the crime because he is so mentally ill that he is unable to do so, while a plea of insanity 2 means that the defendant admits that he committed the offense but is not guilty by reason of mental illness. While denying that he is mentally ill, the defendant claims that he has entered an "insanity 1" plea in this case. When his attorneys or any of the doctors who have examined him explain that the plea he calls insanity 1 does not exist in this state, the defendant refuses to accept this reality.

The defendant has declined to proceed with a not guilty by reason of insanity plea (or what he calls "insanity 2") in part because he does not perceive himself to be mentally ill, but also because he realizes that, if successful, it would result in confinement in WSH.

Although he acknowledges some benefits of the hospital over prison (e.g. the food is better), his primary concern is that at the hospital he has to talk to people, while in jail he has been in solitary confinement, which he prefers. The defendant is also opposed to entering a plea of not guilty by reason of insanity, in which he acknowledges having committed the crimes alleged, because it would preclude the intervention of Anglica Biblica.

With the exception of some details, the defendant's delusional system is for the most part undisputed. Each of the experts has acknowledged that this case is one of the most difficult that they have had to address. They also agree that the medication that has been prescribed to treat the defendant's mental illness, Resperidone Consta, has been effective in alleviating some of the defendant's symptoms. Even though many of the defendant's delusions remain unchanged, no one disputes that he is better now than when he commenced his second 90 day commitment, approximately one year ago. In addition, according to Dr. Waiblinger, the defendant will not have received the full benefit of his drug regimen until sometime in early 2006. Thus, it is expected that his condition will continue to improve.

The ability to assist counsel has been defined as whether a person "has sufficient present ability to consult with his lawyers with a reasonable degree of rational understanding." *State v. Jones*, 99 Wn.2d 735,746 (1983) (quoting *Dusky v. United States*, 362 U.S. 402 (1960)). Thus, the issue before the court is to what extent, if any, the defendant's delusional state interferes with his ability to rationally consult with his attorneys in the presentation of his defense. In support of their conclusion that the defendant meets this standard, Drs. Marquez and Waiblinger, rely, in part, upon the

defendant's acknowledgement of the possibility that Anglica Biblica may not intervene in his trial. In their view, this is an indication that the defendant's Anglica Biblica delusion is less firmly held than before. Accordingly, the delusion is now more akin to more common religious belief in a higher power upon which people often rely in times of crisis. In addition, they observe that once the defendant acknowledges that Anglica Biblica may not intervene, he also acknowledges that the evidence against him, if accepted, would likely result in his conviction of the alleged crimes. Thus, they opine that because the defendant is aware of the evidence and its likely impact, he is capable of rationally discussing the evidence with his attorneys if he chooses to do so.

Drs. Marquez and Waiblinger also note that the defendant's perception of the conspiracy against him has changed. It now incorporates the idea that the defendant's inability to get a fair trial is based on issues of media bias, pretrial publicity and racism. Because these are reality based concerns, it indicates a softening of the defendant's conspiracy delusions. However, both Dr. Marquez and Dr. Watson note that the defendant still believes that he is being prosecuted because his name is French. The doctors also view the defendant as being less concerned about his attorneys being part of the conspiracy. They testified that the defendant stated that the attorneys had been straight with him and appeared to be interested in his defense. He also said that he would work with his attorneys.

The doctors also considered the defendant's general improvement in hygiene and cognitive function. They observed that although he still tended to isolate himself the reason given for this behavior was no longer due to paranoia, i.e. that if he left the room he would be attacked or lack of impulse control, i.e. that if he left the room he would

attack someone.[1] They further found that when given hypothetical criminal cases, the defendant was able to identify appropriate defenses, which in their view warranted an inference that he was also capable of doing so in his own case.

The degree to which a defendant must be able to assist counsel in order to be found competent is not high. *State v. Harris*, 114 Wn.2d 419 (1990). Competency does not depend upon the level of one's intellectual ability or cognitive functioning. *State v. Ortiz*, 104 Wn.2d 479 (1985). Whether a defendant is competent depends upon the ability to rationally assist rather than upon the ability to intelligently assist. *State v. Wicklund*, 96 Wn.2d 798, 800 (1982). That is why in this case the strength of the defendant's delusions is the central issue. If the defendant's consultations with his attorneys are guided his delusions, as opposed to a "reasonable degree of rational understanding," then he lacks the ability to rationally assist his lawyers. *Jones, supra.* The court is not persuaded that the defendant's delusions have abated to the point that he can be said to have obtained this ability.

While the defendant may briefly entertain the idea that Anglica Biblica may not intervene in his case, there seems to be no dispute that this continues to be a strongly held belief. Moreover, even when he does acknowledge that Anglica Biblica may not intervene, it is not because the organization doesn't exist or because it lacks the power to intervene, it is because the organization has turned its back on him or because the trial judge has failed to follow orders. Indeed, the defendant's beliefs remain so strong that his decisions to give up the constitutional right to a jury trial and the right to assert an insanity plea are guided primarily by this delusion. The defendant's belief in Anglica

[1] In their testimony, however, both Drs. Marquez and Waiblinger, acknowledged that the reason the defendant isolated himself was because he believed he was at a disadvantage in communicating with others since he had lost the power to see the words people speak.

Biblica is not even remotely comparable to commonly held religious beliefs or the faith in a higher power upon which many people rely in times of crisis.

The state's experts also testified that the defendant was capable of acknowledging the evidence against him, but they conceded that, at best, in his discussion of the evidence the defendant either denied its existence or explained it as part of the conspiracy against him.[2] Dr. Marquez further testified that if defendant chose to, he could ignore or set aside his delusions and talk rationally about the evidence with his attorneys. He stated, however, that the defendant doesn't do this because it doesn't get him where he wants to go, so he focuses instead on his delusions. This testimony is the only evidence suggesting that the defendant's inability to rationally discuss the evidence is volitional. The testimony of all of the other experts, including Dr. Waiblinger, is that a person suffering from paranoid schizophrenia, could not voluntarily set aside or ignore his or her delusions.

Moreover, while it may be true that, in and of itself, the defendant's denial of the evidence is unremarkable. In this case, it is part and parcel of a pattern of denial that includes not just the evidence in this case, but a denial of his parents, his birth, his skin color and his racial background. Accordingly, the defendant's denial of the evidence is not just a refusal to face unpleasant facts, but a not uncommon symptom of schizophrenia. Based on all of these factors, the court is not persuaded that the defendant

[2] The state correctly points out that Drs. Marquez and Waiblinger were inhibited in their ability to probe in this area by the defendant's assertion of privilege. In addition, the court also notes, as pointed out by the state, that the defendant's experts did have the opportunity to pursue this particular line of inquiry and, inexplicably, failed to do so. But most significantly, the state's experts seemed to conclude that the defendant could rationally assist his attorneys, in part, because he understood that the state's evidence, if accepted, would likely result in his conviction and a life sentence. In the court's view these factors are more relevant to the first prong of the test for competency, i.e. whether he understand the nature of the proceedings against him and the nature of his peril. No one disputes that the defendant meets this prong of the test for competency.

can, at this point, discuss the evidence in a rational way with counsel separate and apart from the delusions caused by his mental illness.

While Drs. Marquez and Waiblinger testified that the defendant expressed a willingness to work with his attorneys, it appears that they simply accepted this comment at face value. They did not explore more specifically what the defendant meant by this statement. They did not ask, for example, whether he had confidence in his attorneys' abilities, whether he would accept his attorneys' advice or whether he still believed that his attorneys were part of the conspiracy. Moreover, based on the evidence presented at the hearing it appears that the defendant's discussions with his attorneys are still dominated by his adherence to the delusions regarding Anglica Biblica's intervention. Indeed, his statement appears to mean only that he would cooperate with his attorneys in the limited role he expects them to play at trial, i.e. waive jury and pronounce his innocence.

For the reasons set forth herein, the court concludes that based upon the delusions caused by his mental illness, the defendant cannot at this time rationally assist his attorneys in the presentation of his defense. Accordingly, he is not currently competent to go forward in this proceeding. The court notes, however, that the defendant's competency has been restored on two previous occasions. In addition, the testimony of all of the experts was that the defendant's prescribed medication, Resperidone Consta, is having the desired effect on his symptoms. Moreover, since the defendant has not been at appropriate therapeutic levels of the medication long enough to have received its full benefit, which will not occur until early in 2006, it is expected that his condition will

continue to improve. Thus, while the defendant is not now competent, there is reason to believe that his competency will again be restored.

At this juncture, however, pursuant to RCW 10.77.090(4) the charges shall be dismissed without prejudice upon presentation of written orders consistent with this letter opinion. The court also concludes that there is sufficient evidence that the defendant remains a danger to others to warrant initiation of civil commitment proceedings pursuant to RCW 71.05. The defendant shall remain in the custody of the King County Department of Adult and Juvenile Detention pending entry of written orders to this effect. Counsel are directed to consult with each other and then contact the court's bailiff to schedule a prompt hearing at which time orders consistent with this opinion may be entered.

Sincerely,

Michael S. Spearman
King County Superior Court

Cc: Court file